IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

MONDAY, THE 5TH FEBRUARY 2007 / 16TH MAGHA 1928

WP(C).No. 13658 of 2006(A)

PETITIONER:

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1. PHILOMINA, D/O.THRESSIAMMA,
AGED 47, KALLUMKULAM HOUSE, THAIKKATTUKARA P.O.
S.N.PURAM, ALUVA.

2. JOFY K.D. S/O.LATE DEVASSY KUTTY,
AGED 23 YEARS, KALLUMKULAM HOUSE,
THAIKKATTUKARA P.O.
S.N.PURAM, ALUVA.

BY ADV. SRI.V.JAYAPRADEEP
SMT.SADHANA KUMARI ESWARI
SRI.E.SHANAVASKHAN

RESPONDENTS:

INDIAN RAILWAYS,
REPRESENTED BY THE DIVISIONAL MANAGER,
SOUTHERN RAILWAYS, THIRUVANANTHAPURAM.

BY ADV. SRI.M.C.CHERIAN,SR.SC.,RAILWAYS

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 05/02/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

P1: COPY OF THE DEATH CERTIFICATE OF DEVASSYKUTTY.

P2: COPY OF THE POST MORTEM REPORT.

P3: TRUE COPY OF THE F.I.R. OF THE RAILWAY POLICE.

P4: COPY OF THE LAWYER'S NOTICE DT.21.2.05 ISSUED TO THE RESPONDENT.

P5: ACKNOWLEDGEMENT LETTER ISSUED BY THE RESPONDENT DT.21.3.05.

P6: TRUE COPY OF REPLY LETTER DT.11.10.2005 ISSUED BY THE RESPONDENT.

TRUE COPY

P.S. TO JUDGE

C.R.

C.N.RAMACHANDRAN NAIR, J.

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W.P.(C) No.13658 of 2006

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Dated this the 5th day of February, 2007.

JUDGMENT

The petitioners are wife and son respectively of a Railway porter by name K.V.Devassikutty who died in an accident that occurred at the Alwaye Railway Station on 3.3.2003. The case of the petitioners is that while pulling a trolley by the said Mr.Devassikutty along with other porters, the trolley hit an obstacle namely, a stone in the Railway platform and on account of the impact Mr.Devassikutty was thrown to the railway track on which a goods train was passing. The two legs of Mr.Devassikutty beneath the waist were cut off and he lost his fingers on the hand. Even though he was taken to the Hospital at Alwaye and later to the General Hospital, Ernakulam, he succumbed to the injuries on the very same day. The petitioners filed claim petition before the Railway Claims Tribunal, which was rejected as not maintainable without even an order. Therefore, the petitioners have approached this court invoking the extra ordinary jurisdiction of this court for awarding compensation for the death of said Devassikutty.

2. I have heard counsel appearing for the petitioners and Standing

Counsel for Railways. Even though detailed counter affidavit is filed stating that Railway is not liable to pay compensation as the said Mr.Devassikutty, a licenced Porter is not an employee, the incident that led to loss of life of the said Devassikutty is not denied by the Railways. Obviously therefore, this court has to assume that the said Devassikutty died in the incident as stated by the petitioners. Besides this, petitioners have produced Ext.P1 Death Certificate, Ext.P2 Post-Mortem Certificate and F.I.R. filed by the Railway Police namely, Ext.P3, to prove their case and the last of the documents namely, the FIR contain the statements of the co-worker who has given the first information as follows:

> "I am a Porter handling luggage and parcels in the Aluva RAilway Station. I am here to report that, today (3.3.03), one Devassy of Aluva, a co-worker of mine was injured by a goods train which hit him at kAluva main Railway Station and died while treatment in the Ernakulam General Hospital. I reported for duty at about 8 AM. Then my colleague Mr.Devassy was also with me. While the deceased, Hidrose and I were pulling a trolley containing luggage to be loaded in the Trivandrum-Bilaspur Express Train from South to North in Aluva Railway Station, as a result of the trolley hitting against a stone on the platform, the said Devassy who was holding the handle of the trolley slipped away from the handle and was thrwon into the 3rd track between the 5th boggy(tanker), of the ILS goods, which was running through that track from Aluva, run over the said Devassy and causing privation of two legs from the waist of the said Devassy and his fingers were cut off, the train immediately stopped, Hidrose, Nazeer and I along with others lifted DEvassy from the track and took him in a stretcher brought in the portico and in a car brought him to the

> Government Hospital, Aluva and the Doctor, after examination sent him for further treatment to the Ernakulam General Hospital and while on treatment due to the intensity of the injuries, today (3.3.03) at about 10.30 AM the said Devassy succumbed to his injuries, and I came here to report that. The said deceased Devassy is about 52 years old and his Badge No. is 357. He is a native of Aluva."

The question to be considered is whether the petitioners are entitled to claim compensation for the death of the victim. Even though petitioners contended that the victim was employed with the Railways as an employee, I am unable to accept this proposition because a licensed Porter is not an employee under the Railways. Even though counsel for the petitioners contended that licensed Porters are entitled to free travel in the Railways and Medical facilities, I do not think such facility extended to licensed Porters make them employees. However, still I feel the alternate claim of the petitioners that they are entitled to compensation for the death of Deveassikutty caused in an untoward incident under Section 124A of the Railways Act, 1989, can be considered. For easy reference the section is extracted herein:

> "Compensation on account of untoward incident:- When in the course of working a railway an untoward incident occurs, then whether or not there has been any wrongful act, neglect or default on the part of the railway administration such as would entitle a passenger who has been injured or the dependant of a passenger who has been killed to maintain an action and recover damages in respect thereof, the railway administration shall, notwithstanding anything contained in any other law, be liable to pay compensation to such extent as may be prescribed and to that

> extent only for loss occasioned by the death of, or injury to, a passenger as a result of such untoward incident:
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> .....
>
> Explanation:- For the purposes of this section, "passenger" includes--
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> (i) a railway servant on duty; and
> (ii) a person who has purchased a valid ticket for travelling by a train carrying passengers, on any date or a valid platform ticket and becomes a victim of an untoward incident."

From the above section it is clear that the passenger is entitled to compensation on account of death or injury caused in an untoward incident. Under the Explanation to the Section, passenger is given a wide meaning to cover even a person who holds a platform ticket. This only means that for any person who suffers injury or death in the Railway premises and whose presence is authorised by the Railways, Railways is bound to compensate him as a passenger. Even though in the normal connotation of the word "passenger" it does not take in a licensed Porter, a licensed Porter is entitled to work in the Railway premises by virtue of a licence given to him which certainly partakes the character of a platform ticket. A Railway Porter is exposed to all the inherent risks in a Railway platform and Station because he is licensed to work there. When a passenger and even a platform ticket holder is entitled to compensation for injury and death in an untoward incident, I see

no reason why a licensed Porter cannot be given the benefit because denial of the said benefit will be a violation of equality clause contained under Article 14 of the Constitution of India. The scheme of compensation under Section 124A is so wide that any person who is entitled to be present in the Railway premises i.e. either Railway employees or those who have taken tickets or licences are all covered by the said clause. In this view of the matter, I hold that the legal heirs of the deceased Devassykutty are entitled to compensation at the same rate as applicable to a passenger dying in an untoward incident.

3. Counsel for the Railways submitted that even if this court in principle hold that the petitioners are entitled to compensation for the death of Devassikutty, the matter has to be referred to the Railways Claims Tribunal. The rate of compensation for death is specified under the Schedule to the Railway Claims Tribunal Act, 1987. Adjudication is called for when compensation is within the discretion of the Tribunal. However, since in this case the victim of the untoward incident died, it is a matter of granting the compensation available under the Schedule to the Act for the person dying on account of such untoward incident, which is stated in the counter affidavit as Rs.4 lakhs. In the circumstances, W.P. is allowed directing the respondent to give a compensation of rupees four lakhs to the petitioners on production of Legal Heirship Certificate stating that they are the only legal heirs of the

deceased, within a period of one month from the date of production of copy of this judgment along with Heirship Certificate.

C.N.RAMACHANDRAN NAIR
Judge

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